

108TH CONGRESS
2D SESSION

S. 150

AN ACT

To make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Internet Tax Non-
5 discrimination Act”.

1 **SEC. 2. FOUR-YEAR EXTENSION OF INTERNET TAX MORA-**
 2 **TORIUM.**

3 (a) IN GENERAL.—Subsection (a) of section 1101 of
 4 the Internet Tax Freedom Act (47 U.S.C. 151 note) is
 5 amended to read as follows:

6 “(a) MORATORIUM.—No State or political subdivision
 7 thereof may impose any of the following taxes during the
 8 period beginning November 1, 2003, and ending Novem-
 9 ber 1, 2007:

10 “(1) Taxes on Internet access.

11 “(2) Multiple or discriminatory taxes on elec-
 12 tronic commerce.”.

13 (b) CONFORMING AMENDMENTS.—(1) Section 1101
 14 of the Internet Tax Freedom Act (47 U.S.C. 151 note)
 15 is amended by striking subsection (d) and redesignating
 16 subsections (e) and (f) as subsections (d) and (e), respec-
 17 tively.

18 (2) Section 1104(10) of the Internet Tax Freedom
 19 Act (47 U.S.C. 151 note) is amended to read as follows:

20 “(10) TAX ON INTERNET ACCESS.—

21 “(A) IN GENERAL.—The term ‘tax on
 22 Internet access’ means a tax on Internet access,
 23 regardless of whether such tax is imposed on a
 24 provider of Internet access or a buyer of Inter-
 25 net access and regardless of the terminology
 26 used to describe the tax.

1 “(B) GENERAL EXCEPTION.—The term
 2 ‘tax on Internet access’ does not include a tax
 3 levied upon or measured by net income, capital
 4 stock, net worth, or property value.”.

5 (3) Section 1104(2)(B)(i) of the Internet Tax Free-
 6 dom Act (47 U.S.C. 151 note) is amended by striking “ex-
 7 cept with respect to a tax (on Internet access) that was
 8 generally imposed and actually enforced prior to October
 9 1, 1998,”.

10 (c) INTERNET ACCESS SERVICE; INTERNET AC-
 11 CESS.—

12 (1) INTERNET ACCESS SERVICE.—Paragraph
 13 (3)(D) of section 1101(d) (as redesignated by sub-
 14 section (b)(1) of this section) of the Internet Tax
 15 Freedom Act (47 U.S.C. 151 note) is amended by
 16 striking the second sentence and inserting “The
 17 term ‘Internet access service’ does not include tele-
 18 communications services, except to the extent such
 19 services are purchased, used, or sold by a provider
 20 of Internet access to provide Internet access.”.

21 (2) INTERNET ACCESS.—Section 1104(5) of
 22 that Act is amended by striking the second sentence
 23 and inserting “The term ‘Internet access’ does not
 24 include telecommunications services, except to the
 25 extent such services are purchased, used, or sold by

1 a provider of Internet access to provide Internet ac-
 2 cess.”.

3 **SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET**
 4 **ACCESS.**

5 The Internet Tax Freedom Act (47 U.S.C. 151 note)
 6 is amended—

7 (1) by redesignating section 1104 as section
 8 1105; and

9 (2) by inserting after section 1103 the fol-
 10 lowing:

11 **“SEC. 1104. GRANDFATHERING OF STATES THAT TAX**
 12 **INTERNET ACCESS.**

13 “(a) PRE-OCTOBER 1998 TAXES.—

14 “(1) IN GENERAL.—Section 1101(a) does not
 15 apply to a tax on Internet access that was generally
 16 imposed and actually enforced prior to October 1,
 17 1998, if, before that date, the tax was authorized by
 18 statute and either—

19 “(A) a provider of Internet access services
 20 had a reasonable opportunity to know, by virtue
 21 of a rule or other public proclamation made by
 22 the appropriate administrative agency of the
 23 State or political subdivision thereof, that such
 24 agency has interpreted and applied such tax to
 25 Internet access services; or

1 “(B) a State or political subdivision thereof
2 generally collected such tax on charges for
3 Internet access.

4 “(2) TERMINATION.—This subsection shall not
5 apply after November 1, 2007.

6 “(b) PRE-NOVEMBER 2003 TAXES.—

7 “(1) IN GENERAL.—Section 1101(a) does not
8 apply to a tax on Internet access that was generally
9 imposed and actually enforced as of November 1,
10 2003, if, as of that date, the tax was authorized by
11 statute and—

12 “(A) a provider of Internet access services
13 had a reasonable opportunity to know by virtue
14 of a public rule or other public proclamation
15 made by the appropriate administrative agency
16 of the State or political subdivision thereof, that
17 such agency has interpreted and applied such
18 tax to Internet access services; and

19 “(B) a State or political subdivision there-
20 of generally collected such tax on charges for
21 Internet access.

22 “(2) TERMINATION.—This subsection shall not
23 apply after November 1, 2005.”.

1 **SEC. 4. ACCOUNTING RULE.**

2 The Internet Tax Freedom Act (47 U.S.C. 151 note)
3 is amended by adding at the end the following:

4 **“SEC. 1106. ACCOUNTING RULE.**

5 “(a) IN GENERAL.—If charges for Internet access
6 are aggregated with and not separately stated from
7 charges for telecommunications services or other charges
8 that are subject to taxation, then the charges for Internet
9 access may be subject to taxation unless the Internet ac-
10 cess provider can reasonably identify the charges for Inter-
11 net access from its books and records kept in the regular
12 course of business.

13 “(b) DEFINITIONS.—In this section:

14 “(1) CHARGES FOR INTERNET ACCESS.—The
15 term ‘charges for Internet access’ means all charges
16 for Internet access as defined in section 1105(5).

17 “(2) CHARGES FOR TELECOMMUNICATIONS
18 SERVICES.—The term ‘charges for telecommuni-
19 cations services’ means all charges for telecommuni-
20 cations services, except to the extent such services
21 are purchased, used, or sold by a provider of Inter-
22 net access to provide Internet access.”.

23 **SEC. 5. EFFECT ON OTHER LAWS.**

24 The Internet Tax Freedom Act (47 U.S.C. 151 note),
25 as amended by section 4, is amended by adding at the
26 end the following:

1 **“SEC. 1107. EFFECT ON OTHER LAWS.**

2 “(a) UNIVERSAL SERVICE.—Nothing in this Act shall
3 prevent the imposition or collection of any fees or charges
4 used to preserve and advance Federal universal service or
5 similar State programs—

6 “(1) authorized by section 254 of the Commu-
7 nications Act of 1934 (47 U.S.C. 254); or

8 “(2) in effect on February 8, 1996.

9 “(b) 911 AND E-911 SERVICES.—Nothing in this
10 Act shall prevent the imposition or collection, on a service
11 used for access to 911 or E-911 services, of any fee or
12 charge specifically designated or presented as dedicated by
13 a State or political subdivision thereof for the support of
14 911 or E-911 services if no portion of the revenue derived
15 from such fee or charge is obligated or expended for any
16 purpose other than support of 911 or E-911 services.

17 “(c) NON-TAX REGULATORY PROCEEDINGS.—Noth-
18 ing in this Act shall be construed to affect any Federal
19 or State regulatory proceeding that is not related to tax-
20 ation.”.

21 **SEC. 6. EXCEPTION FOR VOICE AND OTHER SERVICES**
22 **OVER THE INTERNET.**

23 The Internet Tax Freedom Act (47 U.S.C. 151 note),
24 as amended by section 5, is amended by adding at the
25 end the following:

1 **“SEC. 1108. EXCEPTION FOR VOICE SERVICES OVER THE**
 2 **INTERNET.**

3 “Nothing in this Act shall be construed to affect the
 4 imposition of tax on a charge for voice or similar service
 5 utilizing Internet Protocol or any successor protocol. This
 6 section shall not apply to any services that are incidental
 7 to Internet access, such as voice-capable e-mail or instant
 8 messaging.”.

9 **SEC. 7. GAO STUDY OF EFFECTS OF INTERNET TAX MORA-**
 10 **TORIUM ON STATE AND LOCAL GOVERN-**
 11 **MENTS AND ON BROADBAND DEPLOYMENT.**

12 The Comptroller General shall conduct a study of the
 13 impact of the Internet tax moratorium, including its ef-
 14 fects on the revenues of State and local governments and
 15 on the deployment and adoption of broadband technologies
 16 for Internet access throughout the United States, includ-
 17 ing the impact of the Internet Tax Freedom Act (47
 18 U.S.C. 151 note) on build-out of broadband technology re-
 19 sources in rural under served areas of the country. The
 20 study shall compare deployment and adoption rates in
 21 States that tax broadband Internet access service with
 22 States that do not tax such service, and take into account
 23 other factors to determine whether the Internet Tax Free-
 24 dom Act has had an impact on the deployment or adoption
 25 of broadband Internet access services. The Comptroller
 26 General shall report the findings, conclusions, and any rec-

1 ommendations from the study to the Senate Committee
2 on Commerce, Science, and Transportation and the House
3 of Representatives Committee on Energy and Commerce
4 no later than November 1, 2005.

5 **SEC. 8. EFFECTIVE DATE.**

6 The amendments made by this Act take effect on No-
7 vember 1, 2003.

Passed the Senate April 29, 2004.

Attest:

Secretary.

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